

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JULY 8, 2015

AMENDED IN SENATE JUNE 18, 2015

AMENDED IN ASSEMBLY JUNE 1, 2015

AMENDED IN ASSEMBLY MAY 14, 2015

AMENDED IN ASSEMBLY APRIL 20, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 825

Introduced by Assembly Members Rendon and Mark Stone

February 26, 2015

An act to amend Sections 306, 311.5, 314.5, 583, 1701.1, and 1701.2 of, to ~~amend, renumber, and add~~ *amend and renumber* Section 309.1 of, to add Sections 309.2 and Section 468 to, and to add Article 1.5 (commencing with Section 720) to Chapter 4 of Part 1 of Division 1 of, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 825, as amended, Rendon. Public Utilities Commission.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, gas corporations, heat corporations, telegraph corporations, telephone corporations, and water corporations. ~~Existing law requires the Governor to designate the president of the commission from among its members and requires the president to direct the executive director, the attorney, and other staff of the commission, except for the Office of Ratepayer Advocates. Existing law requires the commission to~~

~~appoint an executive director who is responsible for the commission's executive and administrative duties and to organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction. Existing law authorizes the executive director to employ those officers, administrative law judges, experts, engineers, statisticians, accountants, inspectors, clerks, and employees as the executive director deems necessary to carry out the provisions of the Public Utilities Act or to perform the duties and exercise the powers conferred upon the commission by law. The Public Utilities Act provides that the office of the commission be in the City and County of San Francisco, that the office always be open, legal holidays and nonjudicial days excepted, that the commission hold its sessions at least once in each calendar month in the City and County of San Francisco, and authorizes the commission to also meet at those other times and places as may be expedient and necessary for the proper performance of its duties. The Public Utilities Act requires that meetings of the commission be open and public in accordance with the provisions of a specified state open meeting law.~~

~~This bill would prohibit the commission from reassigning any staff member from a duty or activity authorized by statute to another duty or activity unless the Legislature has authorized personnel for that duty or activity. The bill would require the commission's internal auditor to report directly to the commission.~~

~~(2) The Public Utilities Act provides that the office of the commission be in the City and County of San Francisco, that the office always be open, legal holidays and nonjudicial days excepted, that the commission hold its sessions at least once in each calendar month in the City and County of San Francisco, and authorizes the commission to also meet at those other times and places as may be expedient and necessary for the proper performance of its duties. The Public Utilities Act requires that meetings of the commission be open and public in accordance with the provisions of a specified state open meeting law.~~

~~This bill would require that each commissioner hold office hours and be available to meet with members of the public at least once a month in San Francisco or Los Angeles.~~

~~(3)~~

~~(2) The California Constitution authorizes the commission to establish rules, examine records, and prescribe a uniform system of accounts for all public utilities. The Public Utilities Act requires the commission to inspect and audit the books and records of electrical corporations, gas~~

corporations, heat corporations, telegraph corporations, telephone corporations, and water corporations for regulatory and tax purposes. An inspection and audit is required to be done at least every 3 years if the utility has over 1,000 customers and at least every 5 years if the utility has 1,000 or fewer customers. The act requires that reports of the inspections and audit and other pertinent information be furnished to the State Board of Equalization for use in the assessment of the public utilities.

This bill would delete the requirement that the reports of the inspections and audit and other pertinent information be furnished to the State Board of Equalization for use in the assessment of the public utilities and instead require that the inspections and audit and other pertinent information be posted on the commission's Internet Web site.

(4)

(3) Existing law authorizes the commission to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. Existing law, with certain exceptions, prohibits a public utility from changing any rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. With certain exceptions, whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate for the services or commodities furnished by it, existing law requires that the corporation furnish its customers notice of its application to the commission for approval of the new rate. This notice requirement does not apply to any rate change proposed by a corporation pursuant to an advice letter submitted to the commission filed pursuant to commission-established procedures for advice letters.

This bill would require each public utility that submits an application to change its rates to include in its application a summary of the application that can be understood by the utility's ratepayers. The bill would require that this summary and the application be posted on the commission's Internet Web site and, if the utility has an Internet Web site, to be posted on the utility's Internet Web site. Each public utility that maintains an Internet Web site would additionally be required to include on that site contact information for a utility official who can discuss the nature of the rate application.

(5)

(4) Every public utility is required by existing law to furnish such reports as the commission may require. No information furnished to the commission by a public utility, except those matters specifically

required to be open to public inspection, are open to public inspection or made public except by order of the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any information in violation of these provisions is guilty of a misdemeanor.

This bill would provide that if in a proceeding before the commission, a public utility, or subsidiary, affiliate, or holding company, files a pleading, report, or other document with the commission that is claimed to contain confidential information, it would be required to concurrently file a public version of the pleading, report, or other document with the commission that contains sufficient information for any other party to the proceeding to understand the nature of its contents. The bill would authorize any party to the proceeding to file a motion to make public a pleading, report, or other document filed under a claim of confidentiality. The bill would require an administrative law judge assigned to the proceeding or the assigned commissioner to hold a hearing on the motion and determine whether the pleading, report, or other document should be made public. The bill would authorize any party to seek review of the ruling or order of the administrative law judge or assigned commissioner on the motion by filing a motion for rehearing de novo before the full commission within 30 days of the date the ruling or order on the motion was issued.

(6)

(5) Existing law requires the commission to publish and maintain certain documents and information, including making available on the commission's Internet Web site, the commission's annual work plan, general orders, and Rules of Practice and Procedure, the proposed and alternate proposed decisions and resolutions, the agenda, agenda item documents, rulings of the commission, and adopted decisions and resolutions of the commission. Included in the materials that the commission is required to publish and maintain on its Internet Web site are docket cards that list by title and date of filing or issuance all documents filed and all decisions or rulings issued in those proceedings.

This bill would require that each document that the commission distributes to any service-of-process list be docketed and identified on the commission's Internet Web site.

(7)

(6) Existing law requires the commission to establish an office of the public advisor and to appoint a public advisor. Existing law requires the office of the public advisor to assist members of the public and

ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission.

This bill would add legislative findings and declarations relative to improving the transparency of commission regulatory activities. The bill would require the public advisor to be responsible for ensuring that the activities of the commission are transparent to the public consistent with these legislative findings and directions, the California Public Records Act, the Bagley-Keene Open Meeting Act, and other specified matter. The bill would require the public advisor to have independent responsibility for overseeing the commission's Internet Web site and would require the commission to post on its Internet Web site a summary, as specified, of all electricity procurement contracts entered into by an electrical corporation during the previous 3 years, the expenses of which the commission has approved as being just and reasonable, a list of all proceedings involving public utilities then pending before the commission with information, in summary form, as to the amount of any rate increase being sought, both in cumulative amount and by unit or other means billed to ratepayers, transcripts and available summaries of documents, evidence, testimony and proceedings before the commission or its administration law judges that are not subject to confidentiality, a list of all requests submitted to the commission pursuant to the California Public Records Act, and all advice letters approved by the commission. The bill would require the public advisor to update, maintain, and post the commission's service-of-process lists on the commission's Internet Web site in an electronic form that may be used by any party to complete service of process. The bill would require the commission to open a proceeding to reexamine a specified decision relative to confidentiality of electric procurement data and to modify the commission's confidentiality practices and procedures consistent with specified requirements. The bill would require the California State Auditor to appoint an inspector general for the commission who would be authorized to audit and investigate the commission's activities and report any finding to the Legislature.

(8)

(7) Existing law requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. Upon initiating a hearing, the commission is required to assign one or more commissioners to oversee the case and an administrative law judge

where appropriate. Existing law requires the assigned commissioner to schedule a prehearing conference and to issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

This bill would require the assigned commissioner to convene an all-parties meeting as soon as practicable after the parties in a proceeding are known to discuss the substantive matter to be decided in the proceeding and prospects for resolving issues that would otherwise be litigated. The bill would require an assigned commissioner to attend all hearings in a proceeding.

(9)

(8) Existing law prohibits an officer, employee, or agent of the commission that is personally involved in the prosecution, or in the supervision of the prosecution, of an adjudication case from participating in the decision of the case or in the decision of any factually related adjudicatory proceeding. Existing law permits an officer, employee, or agent of the commission that is personally involved in the prosecution, or in the supervision of the prosecution, of an adjudication case to participate in reaching a settlement of the case, but prohibits the officer, employee, or agent from participating in the decision of the commission to accept or reject the settlement, except as a witness or counsel in an open hearing or a specified closed hearing.

This bill would prohibit an attorney that is prosecuting a matter before the commission from meeting with any commissioner regarding the matter that the attorney is prosecuting unless all parties are present.

(10)

(9) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 306 of the Public Utilities Code is
2 amended to read:

3 306. (a) The office of the commission shall be in the City and
4 County of San Francisco. The office shall always be open, legal
5 holidays and nonjudicial days excepted. The commission shall
6 hold its sessions at least once in each calendar month in the City
7 and County of San Francisco. The commission may also meet at
8 such other times and in such other places as may be expedient and
9 necessary for the proper performance of its duties, and for that
10 purpose may rent quarters or offices.

11 (b) (1) The meetings of the commission shall be open and public
12 in accordance with the provisions of Article 9 (commencing with
13 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
14 the Government Code.

15 (2) In addition to the requirements of Section 11125 of the
16 Government Code, the commission shall include in its notice of
17 meetings the agenda of business to be transacted, and no item of
18 business shall be added to the agenda subsequent to the notice in
19 the absence of an unforeseen emergency situation. A rate increase
20 shall not constitute an unforeseen emergency situation. As used
21 in this subdivision, "meeting" shall include all investigations,
22 proceedings, and showings required by law to be open and public.

23 (3) In addition to scheduled meetings that are open to the public,
24 each commissioner shall hold office hours and be available to meet
25 with members of the public at least once a month in San Francisco
26 or Los Angeles.

27 (c) The commission shall have a seal, bearing the inscription
28 "Public Utilities Commission State of California." The seal shall
29 be affixed to all writs and authentications of copies of records and
30 to such other instruments as the commission shall direct.

31 (d) The commission may procure all necessary books, maps,
32 charts, stationery, instruments, office furniture, apparatus, and
33 appliances.

34 SEC. 2. Section 309.1 of the Public Utilities Code is amended
35 and renumbered to read:

36 305.5. The Governor may appoint one adviser for each member
37 of the commission upon the request of the commission member.
38 Each adviser shall receive a salary fixed by the commission with

1 the approval of the Department of Human Resources. The total
2 number of advisers exempt from civil service shall not exceed
3 five.

4 ~~SEC. 3. Section 309.1 is added to the Public Utilities Code, to~~
5 ~~read:~~

6 ~~309.1. The commission shall not reassign any staff member~~
7 ~~from a duty or activity authorized by statute to another duty or~~
8 ~~activity unless the Legislature has authorized personnel for that~~
9 ~~duty or activity.~~

10 ~~SEC. 4. Section 309.2 is added to the Public Utilities Code, to~~
11 ~~read:~~

12 ~~309.2. The commission's internal auditor shall report directly~~
13 ~~to the commission.~~

14 ~~SEC. 5.~~

15 ~~SEC. 3. Section 311.5 of the Public Utilities Code is amended~~
16 ~~to read:~~

17 311.5. (a) (1) Prior to commencement of any meeting at which
18 commissioners vote on items on the public agenda the commission
19 shall make available to the public copies of the agenda, and upon
20 request, any agenda item documents that are proposed to be
21 considered by the commission for action or decision at a
22 commission meeting.

23 (2) In addition, the commission shall publish the agenda, agenda
24 item documents, and adopted decisions in a manner that makes
25 copies of them easily available to the public, including publishing
26 those documents on the Internet. Publication of the agenda and
27 agenda item documents shall occur on the Internet at the same
28 time as the written agenda and agenda item documents are made
29 available to the public.

30 (b) The commission shall publish and maintain the following
31 documents on the Internet:

32 (1) Each of the commission's proposed and alternate proposed
33 decisions and resolutions, until the decision or resolution is adopted
34 and published.

35 (2) Each of the commission's adopted decisions and resolutions.
36 The publication shall occur within 10 days of the adoption of each
37 decision or resolution by the commission.

38 (3) The then-current version of the commission's general orders
39 and Rules of Practice and Procedure.

1 (4) Each of the commission's rulings. The commission shall
2 maintain those rulings on its Internet Web site until final
3 disposition, including disposition of any judicial appeals, of the
4 respective proceedings in which the rulings were issued.

5 (5) A docket card that lists, by title and date of filing or issuance,
6 all documents filed and all decisions or rulings issued in those
7 proceedings. The commission shall maintain the docket card until
8 final disposition, including disposition of any judicial appeals, of
9 the corresponding proceedings. Each document that the commission
10 distributes to any service-of-process list shall be docketed and
11 identified on the commission's Internet Web site.

12 ~~SEC. 6.~~

13 *SEC. 4.* Section 314.5 of the Public Utilities Code is amended
14 to read:

15 314.5. The commission shall inspect and audit the books and
16 records for regulatory and tax purposes (a) at least once in every
17 three years in the case of every electrical, gas, heat, telegraph,
18 telephone, and water corporation serving over 1,000 customers,
19 and (b) at least once in every five years in the case of every
20 electrical, gas, heat, telegraph, telephone, and water corporation
21 serving 1,000 or fewer customers. An audit conducted in
22 connection with a rate proceeding shall be deemed to fulfill the
23 requirements of this section. Reports of the inspections and audits
24 and other pertinent information shall be posted on the commission's
25 Internet Web site.

26 ~~SEC. 7.~~

27 *SEC. 5.* Section 468 is added to the Public Utilities Code, to
28 read:

29 468. (a) Each public utility that submits an application to
30 change its rates shall include in its application a summary of the
31 application that can be understood by the utility's ratepayers. This
32 summary and the application shall be posted on the commission's
33 Internet Web site and, if the utility has an Internet Web site, shall
34 be posted on the utility's Internet Web site.

35 (b) Each public utility that maintains an Internet Web site shall
36 include on that site contact information for a utility official who
37 can discuss the nature of the rate application. If the rate application
38 includes different rates depending upon the utility's service
39 territory, the contact information shall identify a utility official
40 who can discuss the nature of the rate application for each separate

1 service territory. The utility official shall also be qualified to
2 discuss, in general terms, the operation of the utility in each service
3 territory.

4 ~~SEC. 8.~~

5 *SEC. 6.* Section 583 of the Public Utilities Code is amended
6 to read:

7 583. (a) No information furnished to the commission by a
8 public utility, or any business that is a subsidiary or affiliate of a
9 public utility, or a corporation that holds a controlling interest in
10 a public utility, except those matters specifically required to be
11 open to public inspection by this part, shall be open to public
12 inspection or made public except on order of the commission, or
13 by the commission or a commissioner in the course of a hearing
14 or proceeding. Any present or former officer or employee of the
15 commission who divulges that information is guilty of a
16 misdemeanor.

17 (b) If in a proceeding before the commission, a public utility,
18 or any business that is a subsidiary or affiliate of a public utility,
19 or a corporation that holds a controlling interest in a public utility,
20 files a pleading, report, or other document with the commission
21 that is claimed to contain confidential information, a public version
22 of the pleading, report, or other document that contains sufficient
23 information for any other party to the proceeding to understand
24 the nature of its contents shall be concurrently filed with the
25 commission. An administrative law judge assigned to the
26 proceeding, the assigned commissioner, or the commission may
27 determine the sufficiency of the information contained in the public
28 version of the pleading, report, or other document.

29 (c) Any party to a proceeding before the commission may file
30 a motion to make public a pleading, report, or other document filed
31 by a public utility, or any business that is a subsidiary or affiliate
32 of a public utility, or a corporation that holds a controlling interest
33 in a public utility, under a claim of confidentiality. An
34 administrative law judge assigned to the proceeding or the assigned
35 commissioner shall hold a hearing on the motion and determine
36 whether the pleading, report, or other document should be made
37 public. In determining the motion, the administrative law judge or
38 assigned commissioner shall make written findings and
39 conclusions.

1 (d) At any public hearing, an assigned administrative law judge
2 may provide direction to the parties in a proceeding as to what
3 types of information may be filed with the commission under a
4 claim of confidentiality.

5 (e) No ruling or order entered pursuant to subdivision (c) shall
6 be considered a ruling or order of the commission or a
7 commissioner unless it reflects an examination of the specific
8 information or documents to be made public or opened to public
9 inspection. Any party may seek review of a ruling or order issued
10 pursuant to subdivision (c) to the full commission by filing a
11 motion for rehearing de novo by the full commission within 30
12 days of the date the ruling or order on the motion was issued, and
13 the pleading, report, or other document shall remain confidential
14 while the motion for rehearing is pending. When a motion for
15 rehearing de novo is filed, the full commission shall make the final
16 determination of the motion to make public a pleading, report, or
17 other document filed under claim of confidentiality.

18 ~~SEC. 9.~~

19 *SEC. 7.* Article 1.5 (commencing with Section 720) is added
20 to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code,
21 to read:

22
23 Article 1.5. Transparency of Commission Regulatory Activities

24
25 720. The Legislature finds and declares all of the following:

26 (a) Transparency in how the commission operates and makes
27 its decisions is critical to gaining and retaining the confidence of
28 the public at large and serving the public utility ratepayers affected
29 by the commission's decisions.

30 (b) The activities of private entities that provide essential
31 services to the public and that have dedicated their property to the
32 service of the public are defined as public utilities in the California
33 Constitution, subject to the control by the Legislature.

34 (c) The services provided by public utilities are essential to the
35 proper operation of our economy and fundamentally affect every
36 California family and business.

37 (d) Under the California Constitution, the commission is granted
38 authority to establish its own procedures subject to statute and due
39 process and to establish rules for public utilities, and the Legislature
40 has plenary authority to confer additional authority and jurisdiction

1 upon the commission and to establish the manner and scope of
2 review of commission action in a court of record.

3 (e) Because the California Constitution provides special
4 consideration to public utilities and to the commission that
5 regulates those public utilities, it is essential to give the public the
6 ability to monitor the functioning of the commission and its actions.

7 (f) The greater and more unfettered the public official's power,
8 the greater the public's interest in monitoring the exercise of that
9 power.

10 (g) Access to information concerning the conduct of the public's
11 business by the commission is a fundamental and necessary right
12 for every person in the state.

13 (h) Information concerning services provided by public utilities
14 is of the highest public interest, including information about quality
15 and reliability of service to the public and information about costs
16 and profits.

17 (i) While confidentiality of information submitted by a public
18 utility may be necessary in some cases, as provided in Section 583,
19 the activities and decisions of the commission should remain as
20 transparent as reasonably possible.

21 721. The commission shall open a proceeding to reexamine
22 Decision 06-06-066 (June 29, 2006) Interim Opinion Implementing
23 Senate Bill 1488, Relating to Confidentiality of Electric
24 Procurement Data Submitted to the Commission, as modified by
25 Decision 07-05-032 (May 3, 2007), Order Modifying Decision
26 (D.) 06-06-066 and Denying Rehearing of the Decision, as
27 Modified, and shall modify the commission's confidentiality
28 practices and procedures consistent with the requirements of
29 Section 724.

30 722. (a) The public advisor of the commission, appointed
31 pursuant to Section 321, shall have responsibility for ensuring that
32 the activities of the commission are transparent to the public as
33 provided by law, including, but not limited to, the California Public
34 Records Act (Chapter 3.5 (commencing with Section 6250) of
35 Division 7 of Title 1 of the Government Code), the Bagley-Keene
36 Open Meeting Act (Article 9 (commencing with Section 11120)
37 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
38 Code), and this article.

1 (b) The commission shall provide funding for the costs of the
2 office of the public advisor from reimbursement fees paid pursuant
3 to Chapter 2.5 (commencing with Section 401).

4 (c) The public advisor shall develop and make available
5 easy-to-understand guides for the public to participate in
6 commission proceedings.

7 (d) The public advisor shall update, maintain, and post the
8 commission's service-of-process lists on the commission's Internet
9 Web site in an electronic form that may be used by any party to
10 complete service of process.

11 723. The California State Auditor shall appoint to the staff of
12 the California State Auditor's Office an inspector general for the
13 commission, which shall report any findings to the Legislature.
14 The inspector general shall have authority, including the authorities
15 of the California State Auditor, to audit and investigate the
16 commission's activities based on information it receives. The
17 California State Auditor may recover the costs for the inspector
18 general's activities from reimbursement fees paid pursuant to
19 Chapter 2.5 (commencing with Section 401).

20 724. (a) The public advisor of the commission shall have
21 independent responsibility for overseeing the commission's Internet
22 Web site, in order to ensure adequate transparency in the
23 information provided to the public.

24 (b) The commission shall make available to the public on its
25 Internet Web site all of the following information:

26 (1) A summary of all electricity procurement contracts entered
27 into by an electrical corporation during the previous three years,
28 the expenses of which the commission, if applicable, has approved
29 as being just and reasonable. The summary shall include
30 information as to the name of the generating facility, its location,
31 the electricity or electricity products procured, the fuel or energy
32 source used to generate the electricity, the estimated total expense
33 that the electrical corporation will incur pursuant to the contract,
34 the estimated cost by unit of energy that the electrical corporation
35 will incur pursuant to the contract, when, if applicable, the contract
36 was approved by the commission, and, if applicable, the decision
37 or resolution approving the contract. Information on costs and
38 expenses of the contract shall not be posted until the later of when
39 the electrical corporation has completed the legal transactions

1 required to acquire the electricity or electricity products, or one
2 year after the commission approves the contract, if applicable.

3 (2) A list of all proceedings involving public utilities then
4 pending before the commission with information, in summary
5 form, as to the amount of any rate increase being sought, both in
6 cumulative amount and by unit or other means billed to ratepayers.

7 (3) Transcripts and available summaries of documents, evidence,
8 testimony, and proceedings before the commission or its
9 administrative law judges that are not subject to confidentiality
10 pursuant to Section 583, or with confidential portions redacted.

11 (4) A list of all requests submitted to the commission pursuant
12 to the California Public Records Act (Chapter 3.5 (commencing
13 with Section 6250) of Division 7 of Title 1 of the Government
14 Code).

15 (5) Advice letters approved by the commission.

16 ~~SEC. 10.~~

17 *SEC. 8.* Section 1701.1 of the Public Utilities Code is amended
18 to read:

19 1701.1. (a) The commission, consistent with due process,
20 public policy, and statutory requirements, shall determine whether
21 a proceeding requires a hearing. The commission shall determine
22 whether the matter requires a quasi-legislative, an adjudication,
23 or a ratesetting hearing. The commission's decision as to the nature
24 of the proceeding shall be subject to a request for rehearing within
25 10 days of the date of that decision. If that decision is not appealed
26 to the commission within that time period it shall not be
27 subsequently subject to judicial review. Only those parties who
28 have requested a rehearing within that time period shall
29 subsequently have standing for judicial review and that review
30 shall only be available at the conclusion of the proceeding. The
31 commission shall render its decision regarding the rehearing within
32 30 days. The commission shall establish regulations regarding ex
33 parte communication on case categorization issues.

34 (b) (1) The commission upon initiating a hearing shall assign
35 one or more commissioners to oversee the case and an
36 administrative law judge where appropriate. The assigned
37 commissioner shall schedule a prehearing conference. The assigned
38 commissioner shall prepare and issue by order or ruling a scoping
39 memo that describes the issues to be considered and the applicable
40 timetable for resolution.

1 (2) The assigned commissioner shall convene an all-parties
2 meeting as soon as practicable after the parties in the proceeding
3 are known to discuss the substantive matter to be decided in the
4 proceeding and prospects for resolving issues that would otherwise
5 be litigated.

6 (3) The assigned commissioner shall attend all hearings in a
7 proceeding.

8 (c) (1) Quasi-legislative cases, for purposes of this article, are
9 cases that establish policy, including, but not limited to,
10 rulemakings and investigations which may establish rules affecting
11 an entire industry.

12 (2) Adjudication cases, for purposes of this article, are
13 enforcement cases and complaints except those challenging the
14 reasonableness of any rates or charges as specified in Section 1702.

15 (3) Ratesetting cases, for purposes of this article, are cases in
16 which rates are established for a specific company, including, but
17 not limited to, general rate cases, performance-based ratemaking,
18 and other ratesetting mechanisms.

19 (4) “Ex parte communication,” for purposes of this article,
20 means any oral or written communication between a decisionmaker
21 and a person with an interest in a matter before the commission
22 concerning substantive, but not procedural issues, that does not
23 occur in a public hearing, workshop, or other public proceeding,
24 or on the official record of the proceeding on the matter. “Person
25 with an interest,” for purposes of this article, means any of the
26 following:

27 (A) Any applicant, an agent or an employee of the applicant,
28 or a person receiving consideration for representing the applicant,
29 or a participant in the proceeding on any matter before the
30 commission.

31 (B) Any person with a financial interest, as described in Article
32 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
33 Government Code, in a matter before the commission, or an agent
34 or employee of the person with a financial interest, or a person
35 receiving consideration for representing the person with a financial
36 interest.

37 (C) A representative acting on behalf of any civic,
38 environmental, neighborhood, business, labor, trade, or similar
39 organization who intends to influence the decision of a commission
40 member on a matter before the commission.

1 The commission shall by regulation adopt and publish a
2 definition of decisionmakers and persons for purposes of this
3 section, along with any requirements for written reporting of ex
4 parte communications and appropriate sanctions for noncompliance
5 with any rule proscribing ex parte communications. The regulation
6 shall provide that reportable communications shall be reported by
7 the party, whether the communication was initiated by the party
8 or the decisionmaker. Communications shall be reported within
9 three working days of the communication by filing a “Notice of
10 Ex Parte Communication” with the commission in accordance
11 with the procedures established by the commission for the service
12 of that notice. The notice shall include the following information:

13 (i) The date, time, and location of the communication, and
14 whether it was oral, written, or a combination.

15 (ii) The identity of the recipient and the person initiating the
16 communication, as well as the identity of any persons present
17 during the communication.

18 (iii) A description of the party’s, but not the decisionmaker’s,
19 communication and its content, to which shall be attached a copy
20 of any written material or text used during the communication.

21 ~~SEC. 11.~~

22 *SEC. 9.* Section 1701.2 of the Public Utilities Code is amended
23 to read:

24 1701.2. (a) If the commission pursuant to Section 1701.1 has
25 determined that an adjudication case requires a hearing, the
26 procedures prescribed by this section shall be applicable. The
27 assigned commissioner or the assigned administrative law judge
28 shall hear the case in the manner described in the scoping memo.
29 The scoping memo shall designate whether the assigned
30 commissioner or the assigned administrative law judge shall preside
31 in the case. The commission shall provide by rule for peremptory
32 challenges and challenges for cause of the administrative law judge.
33 Challenges for cause shall include, but not be limited to, financial
34 interests and prejudice. The rule shall provide that all parties are
35 entitled to one peremptory challenge of the assignment of the
36 administrative law judge in all cases. All parties are entitled to
37 unlimited peremptory challenges in any case in which the
38 administrative law judge has within the previous 12 months served
39 in any capacity in an advocacy position at the commission, been
40 employed by a regulated public utility, or has represented a party

1 or has been a party of interest in the case. The assigned
2 commissioner or the administrative law judge shall prepare and
3 file a decision setting forth recommendations, findings, and
4 conclusions. The decision shall be filed with the commission and
5 served upon all parties to the action or proceeding without undue
6 delay, not later than 60 days after the matter has been submitted
7 for decision. The decision of the assigned commissioner or the
8 administrative law judge shall become the decision of the
9 commission if no further action is taken within 30 days. Any
10 interested party may appeal the decision to the commission,
11 provided that the appeal is made within 30 days of the issuance of
12 the decision. The commission may itself initiate a review of the
13 proposed decision on any grounds. The commission decision shall
14 be based on the record developed by the assigned commissioner
15 or the administrative law judge. A decision different from that of
16 the assigned commissioner or the administrative law judge shall
17 be accompanied by a written explanation of each of the changes
18 made to the decision.

19 (b) (1) Notwithstanding Section 307, an officer, employee, or
20 agent of the commission that is personally involved in the
21 prosecution or in the supervision of the prosecution of an
22 adjudication case before the commission shall not participate in
23 the decision of the case, or in the decision of any factually related
24 adjudicatory proceeding, including participation in or advising the
25 commission as to findings of fact, conclusions of law, or orders.
26 An officer, employee, or agent of the commission that is personally
27 involved in the prosecution or in the supervision of the prosecution
28 of an adjudication case may participate in reaching a settlement
29 of the case, but shall not participate in the decision of the
30 commission to accept or reject the settlement, except as a witness
31 or counsel in an open hearing or a hearing closed pursuant to
32 subdivision (d). The Legislature finds that the commission performs
33 both prosecutorial and adjudicatory functions in an adjudication
34 case and declares its intent that an officer, employee, or agent of
35 the commission, including its attorneys, may perform only one of
36 those functions in any adjudication case or factually related
37 adjudicatory proceeding.

38 (2) An attorney that is prosecuting a matter before the
39 commission shall not meet with any commissioner regarding the
40 matter that the attorney is prosecuting unless all parties are present.

1 (c) Ex parte communications shall be prohibited in adjudication
2 cases.

3 (d) Notwithstanding any other law, the commission may meet
4 in a closed hearing to consider the decision that is being appealed.
5 The vote on the appeal shall be in a public meeting and shall be
6 accompanied with an explanation of the appeal decision.

7 (e) Adjudication cases shall be resolved within 12 months of
8 initiation unless the commission makes findings why that deadline
9 cannot be met and issues an order extending that deadline. In the
10 event that a rehearing of an adjudication case is granted, the parties
11 shall have an opportunity for final oral argument.

12 (f) (1) The commission may determine that the respondent
13 lacks, or may lack, the ability to pay potential penalties or fines
14 or to pay restitution that may be ordered by the commission.

15 (2) If the commission determines that a respondent lacks, or
16 may lack, the ability to pay, the commission may order the
17 respondent to demonstrate, to the satisfaction of the commission,
18 sufficient ability to pay potential penalties, fines, or restitution that
19 may be ordered by the commission. The respondent shall
20 demonstrate the ability to pay, or make other financial
21 arrangements satisfactory to the commission, within seven days
22 of the commission commencing an adjudication case. The
23 commission may delegate to the attorney to the commission the
24 determination of whether a sufficient showing has been made by
25 the respondent of an ability to pay.

26 (3) Within seven days of the commission's determination of the
27 respondent's ability to pay potential penalties, fines, or restitution,
28 the respondent shall be entitled to an impartial review by an
29 administrative law judge of the sufficiency of the showing made
30 by the respondent of the respondent's ability to pay. The review
31 by an administrative law judge of the ability of the respondent to
32 pay shall become part of the record of the adjudication and is
33 subject to the commission's consideration in its order resolving
34 the adjudication case. The administrative law judge may enter
35 temporary orders modifying any financial requirement made of
36 the respondent pending the review by the administrative law judge.

37 (4) A respondent that is a public utility regulated under a rate
38 of return or rate of margin regulatory structure or that has gross
39 annual revenues of more than one hundred million dollars
40 (\$100,000,000) generated within California is presumed to be able

1 to pay potential penalties or fines or to pay restitution that may be
2 ordered by the commission, and, therefore, paragraphs (1) to (3),
3 inclusive, do not apply to that respondent.

4 ~~SEC. 12.~~

5 *SEC. 10.* No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.